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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 DOUGLAS ROBERT COLLIER, )  
11 Petitioner, ) No. C 06-00511 CRB (PR)  
12 vs. ) ORDER DENYING PETITION  
13 E. YLST, Warden, ) FOR A WRIT OF HABEAS  
14 Respondent. ) CORPUS  
15 \_\_\_\_\_ )  
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17 INTRODUCTION

18 Petitioner Douglas Collier, a state prisoner at San Quentin State Prison  
19 ("SQSP"), filed this petition for a writ of habeas corpus under 28 U.S.C. § 2254  
20 challenging the California Board of Prison Terms' ("BPT") decision of May 20,  
21 2005 finding him not suitable for parole.

22 The court found that the petition, when liberally construed, appeared to  
23 state a cognizable due process claim under § 2254 and, on June 2, 2006, ordered  
24 respondent to show cause why a writ of habeas corpus should not be granted.  
25 Respondent filed an answer to the order to show cause and petitioner  
26 subsequently filed a traverse. For the reasons discussed below, the petition is  
27 denied.

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## BACKGROUND

Petitioner was convicted of second degree murder on December 17, 1981 in the Superior Court of the State of California in and for the County of Santa Clara and was sentenced to an indeterminate prison term of 15 years to life.

Petitioner has been found not suitable for parole each time he has appeared before the BPT. On May 20, 2005, petitioner appeared with counsel before a BPT panel for a subsequent parole consideration hearing and again was found not suitable for parole. The panel found that petitioner would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. The presiding commissioner explained that, in deciding to deny parole, the panel considered petitioner's commitment offense, his prior criminal and social history, his behavior and programming since commitment, and any other information that may have a bearing on parole suitability. Accord Cal. Code Regs. tit. 15, § 2402(b).

Petitioner challenged the BPT's May 20, 2005 decision in the state superior, appellate and supreme courts. After the Supreme Court of California denied his final state habeas petition on January 4, 2006, the instant federal petition for a writ of habeas corpus followed.

## DISCUSSION

### A. Standard of Review

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified under 28 U.S.C. § 2254, provides "the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment, even when the petitioner is not challenging his underlying state court conviction." White v. Lambert, 370 F.3d 1002, 1009-10 (9th Cir. 2004). Under AEDPA, this court may entertain a petition for habeas relief on behalf of a California state

1 inmate “only on the ground that he is in custody in violation of the Constitution  
2 or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

3 The writ may not be granted unless the state court’s adjudication of any  
4 claim on the merits: “(1) resulted in a decision that was contrary to, or involved  
5 an unreasonable application of, clearly established Federal law, as determined by  
6 the Supreme Court of the United States; or (2) resulted in a decision that was  
7 based on an unreasonable determination of the facts in light of the evidence  
8 presented in the State court proceeding.” Id. at § 2254(d). Under this deferential  
9 standard, federal habeas relief will not be granted “simply because [this] court  
10 concludes in its independent judgment that the relevant state-court decision  
11 applied clearly established federal law erroneously or incorrectly. Rather, that  
12 application must also be unreasonable.” Williams v. Taylor, 529 U.S. 362, 411  
13 (2000).

14 While circuit law may provide persuasive authority in determining  
15 whether the state court made an unreasonable application of Supreme Court  
16 precedent, the only definitive source of clearly established federal law under 28  
17 U.S.C. § 2254(d) is in the holdings (as opposed to the dicta) of the Supreme  
18 Court as of the time of the state court decision. Id. at 412; Clark v. Murphy, 331  
19 F.3d 1062, 1069 (9th Cir. 2003).

20 When the state court decisions do not provide a reasoned opinion, as in  
21 this case, the court “must conduct an independent review of the record to  
22 determine whether the state court’s decision was objectively unreasonable.” Sass  
23 v. California Bd. of Prison Terms, 461 F.3d 1123, 1127 (9th Cir. 2006).

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1           Petitioner's due process rights require that "some evidence" support the  
2 parole board's decision finding him unsuitable for parole. Sass, 461 F.3d at 1125  
3 (holding that the "some evidence" standard for disciplinary hearings outlined in  
4 Superintendent v. Hill, 472 U.S. 445, 454-55 (1985), applies to parole decisions  
5 in § 2254 habeas petition); Biggs, 334 F.3d at 915 (same); McQuillion, 306 F.2d  
6 at 904 (same). This "some evidence" standard is minimally stringent and ensures  
7 that "the record is not so devoid of evidence that the findings of [the BPT] were  
8 without support or otherwise arbitrary." Hill, 472 U.S. at 457. Determining  
9 whether this requirement is satisfied "does not require examination of the entire  
10 record, independent assessment of the credibility of witnesses, or weighing of the  
11 evidence." Id. at 455-56 (quoted in Sass, 461 F.3d at 1128).

12           Due process also requires that the evidence underlying the parole board's  
13 decision have some indicia of reliability. Biggs, 334 F.3d at 915; McQuillion,  
14 306 F.3d at 904. Relevant in this inquiry "is whether the prisoner was afforded  
15 an opportunity to appear before, and present evidence to, the board." Morales v.  
16 California Dep't of Corrections, 16 F.3d 1001, 1005 (9th Cir. 1994), rev'd on  
17 other grounds, 514 U.S. 499 (1995).

18           The record indicates, and petitioner does not challenge, that the BPT  
19 afforded petitioner and his counsel an opportunity to speak at the hearing, gave  
20 them time to review petitioner's central file, allowed them to present relevant  
21 documents, and provided them with a reasoned decision in denying parole.  
22 Petitioner's claim is that the board's determination of parole unsuitability lacked  
23 some evidence necessary to support the decision and to satisfy due process. This  
24 claim is without merit. A review of the relevant factors relied upon by the BPT,  
25 and as they were explained to petitioner, reveals that there was some evidence to  
26 support the parole denial.

1           1. Commitment Offense and Pre-Offense Behavior

2           The BPT's decision on May 20, 2005 cited the nature and circumstances  
3 of petitioner's crime as evidence for denying parole. When petitioner escorted  
4 Danny Bettencourt to the victim's home to retrieve a mutual friend's belongings  
5 on April 6, 1981, he knew "at the very least" there was going to be a fight. May  
6 20, 2005 Hr'g Tr. at 93 (Resp't Ex. C). When an altercation ensued, petitioner  
7 stabbed the victim 28 times: 16 times with a screwdriver, and 12 times with a  
8 butcher knife. The board was particularly concerned that several of the stab  
9 wounds were inflicted when the victim was lying semi-conscious on the ground,  
10 and also after petitioner and Mr. Bettencourt dragged the victim to the couch, at  
11 which point the victim was "completely helpless." Id. at 94. The board  
12 concluded that petitioner carried out the offense "in a manner that demonstrates  
13 an exceptionally callous disregard for human suffering." Id. Accord Cal. Code  
14 Regs. tit. 15, § 2402(c)(1)(D).

15           The board also considered petitioner's unstable social history prior to  
16 incarceration, including "his substance abuse, his high school dropout history,  
17 [and] his runaway history," as evidence for denying parole. Resp't Ex. C at 97.  
18 Accord Cal. Code Regs. tit. 15, § 2402(c)(3). Petitioner admittedly experimented  
19 with "marijuana, amphetamines, cocaine, LSD, PCP, and mushrooms" beginning  
20 at age 13, ran away from home when he was fourteen, and dropped out of high  
21 school in the eleventh grade. Resp't Ex. C at 24, 26. The board was especially  
22 concerned with petitioner's continued abuse of drugs and alcohol in his late  
23 teens following a year spent at a rehabilitation facility.

24           Petitioner contends that continued reliance on the immutable  
25 circumstances of his murder offense and social history implicates his due process  
26 rights. Petitioner suggests that the BPT's reliance on static factors conflicts with  
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1 the Ninth Circuit's ruling in Biggs. In Biggs, the Ninth Circuit upheld the initial  
2 denial of a parole release date based solely on the nature of the crime and the  
3 prisoner's conduct before incarceration, but cautioned that, over time, denying a  
4 prisoner parole strictly because of the nature of his offense and his prior conduct  
5 "would raise serious questions involving his liberty interest in parole . . . and  
6 could result in a due process violation." Biggs, 334 F.3d at 916-17.

7 The Ninth Circuit recently emphasized the continuing vitality of Biggs,  
8 but found that relief for the petitioner was precluded by the Sass decision, which  
9 upheld a denial of parole based in reliance on a commitment offense that was less  
10 callous and cruel than Irons's. Irons v. Carey, No. 05-15275, slip op. 8335,  
11 8348-49 (9th Cir. July 13, 2007).<sup>1</sup> However, the Ninth Circuit made a point of  
12 noting that all of the cases in which it had previously held that a denial of parole  
13 based solely on the commitment offense comported with due process involved  
14 situations where the prisoner had not yet served the minimum number of years  
15 required by his sentence. Id. at 8349. "All we held in those cases and all we hold  
16 today, therefore, is that, given the particular circumstances of the offenses in  
17 these cases, due process was not violated when these prisoners were deemed  
18 unsuitable for parole prior to the expiration of their minimum terms." Id.

19 In this case, petitioner was deemed unsuitable for parole well after the  
20 expiration of the minimum term of 15 years. However, this court need not decide  
21 whether this is a case where the rationale underlying Biggs justifies relief because  
22 petitioner's denial was not based solely on his commitment offense and conduct  
23 before incarceration.

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26 <sup>1</sup>The Sass panel questioned Biggs by noting that "it is not our function to  
27 speculate about how future parole hearings could proceed." Sass, 461 F.3d at  
28 1129.

1                   2. Lack of Insight and Insufficient Self-Help

2                   Even if the BPT's reliance on the nature of the murder offense and  
3 previous criminal record did not satisfy the "some evidence" standard, petitioner  
4 is not entitled to relief. The board's decision was not based solely on petitioner's  
5 murder offense and prior conduct. The board discussed at length its finding that  
6 petitioner "needs to continue to participate in self help in order to continue to  
7 understand and cope with stress in a non-destructive manner . . . [and] in order to  
8 continue to develop insight into the underlying factors that led to this offense."  
9 Resp't Ex. C at 96.

10                  The board was particularly concerned with petitioner's minimization of  
11 his culpability in the crime. During earlier parole hearings, petitioner placed  
12 much of the blame for the murder on Mr. Bettencourt, as well as the victim  
13 himself. For instance, petitioner had previously stated that it was Mr.  
14 Bettencourt, not he, who grabbed the butcher knife, and that the fight escalated  
15 when the victim wielded a gun. As recently as 2002, petitioner expressed  
16 concern at the BPT's failure to look into the "type of person" the victim was,  
17 which the board interpreted as petitioner downplaying his role in the murder.  
18 May 14, 2002 Hr'g Tr. at 62 (Resp't Ex. F).

19                  By the 2005 hearing, petitioner appeared to assume complete  
20 responsibility for the murder. At the hearing, the district attorney asked  
21 petitioner about the progress that he had made regarding in assuming personal  
22 responsibility for the crime. Petitioner responded:

23                   I believe that, as I've gotten older and through my faith, I've  
24 learned that lying about what I did is going to get me nowhere.  
25 And it doesn't do, it isn't respectful to the family. It isn't respectful  
26 to Mark's soul, so to speak. I need to become straight and be clean,  
27 and I've tried to do that in the past couple of hearings. And people,  
28 the Board, the Panel, can hang me up for lying, because I did lie. I  
did, you know, place blame elsewhere. But you know, there's not,  
there's nothing I can do that's going to clean up or sugar coat what



1 I did. Mr. Jones was a human being and he's dead and I stabbed  
2 him. And there wasn't really an excuse for that.

3 Resp't Ex. C at 66.

4 While the BPT was pleased that petitioner fully accepted responsibility for  
5 the murder, it characterized such change as "recent" and expressed a desire to see  
6 petitioner "maintain those gains over an extended period of time." Id. at 96. The  
7 panel was specifically concerned that it took petitioner until 2000 to admit that  
8 he stabbed the victim with a butcher's knife, and also that petitioner had not yet  
9 "sufficiently participated in beneficial self help" while in prison "in order to  
10 continue to understand and cope with stress in a non-destructive manner" and  
11 "continue to develop insight into the underlying factors that led to [his] offense."  
12 Id. at 94, 96. Under California law, the BPT's concerns in this regard may be  
13 considered as "circumstances tending to show unsuitability." Cal. Code Regs. tit.  
14 15, § 2402(c)(1)(A)-(E).

15 3. There was "Some Evidence" to Support BPT Decision

16 The BPT's May 20, 2005 decision to deny petitioner parole is supported  
17 by some evidence bearing some indicia of reliability. The murder offense was  
18 cruel and callous; petitioner has an unstable social history; and petitioner needs  
19 further self-help and therapy programming in order to gain greater insight into  
20 reasons for his actions. See, e.g., Rosas v. Nielsen, 428 F.3d 1229, 1232-33 (9th  
21 Cir. 2005) (upholding denial of parole based on gravity of offense and psychiatric  
22 reports); Morales, 16 F.3d at 1005 (upholding denial of parole based on criminal  
23 history, cruel nature of offense, and need for further psychiatric treatment).

24 Petitioner contends that the board did not give proper weight to the  
25 circumstances tending to show suitability for parole. See Cal. Code Regs. Tit.  
26 15, § 2402(d)(1)-(9). Indeed, the BPT noted several factors supporting  
27 petitioner's case for parole eligibility, namely, a lack of disciplinary write-ups  
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1 while incarcerated, two recent psychological evaluations that were both  
2 favorable, good parole plans, excellent community and family support, and  
3 several job offers. Id. at 95. However, the board concluded that “the[se]  
4 positive aspects of behavior do not outweigh the factors of unsuitability.” Resp’t  
5 Ex. C at 97. It is beyond the scope of this court’s authority to re-weigh the  
6 factors affecting parole suitability. Powell v. Gomez, 33 F.3d 39, 42 (9th Cir.  
7 1994).

### 8 CONCLUSION

9 Petitioner is not entitled to federal habeas relief because the state courts'  
10 rejection of his federal claims was not contrary to, or involved an unreasonable  
11 application of, clearly established Supreme Court precedent, or was based on an  
12 unreasonable determination of the facts. See 28 U.S.C. § 2254(d).

13 The court is satisfied that the board gave petitioner individualized  
14 consideration and that there is “some evidence” in the record to support the panel's  
15 decision to deny petitioner parole at the May 20, 2005 hearing.

16 The petition for a writ of habeas corpus is DENIED.

17 The clerk shall enter judgment in favor of respondent and close the file.

18 SO ORDERED.

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20 DATED: Aug. 09, 2007

21   
22 CHARLES R. BREYER  
23 United States District Judge  
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